IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

OP.No. 11025 of 2002(K)

PETITIONER:

P.M.ALEXANDER,HEAD CLERK,KARTHIKAPILLY GRAMA PANCHAYAT,ALLEPPEY DISTRICT.

BY ADV. SMT.V.P.SEEMANDINI
SMT.VIJU.P.VIJAYAN

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY THE SECRETARY, TO GOVERNMENT, LOCAL SELF GOVT. DEPARTMENT, SECRETARIAT, TRIVANDRUM.**

2. **THE DIRECTOR OF PANCHAYAT, TRIVANDRUM.**

3. **MR.SOMANANDAN, U.D.CLERK, OFFICE OF THE DIRECTOR OF PANCHAYAT, TRIVANDRUM.**

BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN
SRI.SOMANANDAN[RESPONDENT NO.3 IN PSN]

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.11025/2002

ORDER ON CMP. NO.19350/2002 IN OP. NO.11025/2002

DISMISSED

3.10.2007 **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS DT. 14.12.01 OF THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE LETTER DT. 2.4.02 OF THE IST RESPONDENT.

EXR.P3:- COPY OF THE PROCEEDINGS DT. 19.7.98 OF THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE GO(P) 25/97/ PARD DT. 28.11.97.

/TRUE COPY/

P.S. TO JUDGE

tss

Thottathil B. Radhakrishnan, J.

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O.P.No.11025 of 2002

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Dated this the 3rd day of October, 2007.

JUDGMENT

Petitioner challenges Ext.P2 by which the third respondent has been declared entitled to seniority over the petitioner with effect from 22-9-1989. In so far as the last paragraph of Ext.P2 is concerned, the statement therein that the benefit of Rule 13A of the General Rules would apply only to those SC/ST who entered service on or after 1-1-1986, is contrary to the provision in Rule 13A(1)(a). Learned Government Pleader points out that this has been clarified in a later letter and all that was intended was that the effect of Rule !3AA would not apply to those who joined service after 1-1-1986. That issue would not have any bearing on the rival claims of the petitioner and the third respondent.

2. Petitioner has yet another contention that he was not heard before Ext.P2 decision was rendered and still further that the first respondent ought not to have issued Ext.P2 order when the authority to decide such an issue was the second respondent.

3. Dealing with the contention whether the first respondent Government has acted without jurisdiction in issuing Ext.P2, it has to be noticed that the second respondent on whom the petitioner concedes the power is essentially a subordinate of the first respondent. Learned Government Pleader points out that the authority to prepare the seniority list is with the second respondent. When the State Government has issued the impugned order, there is no reason to find fault with it particularly when the Government are entitled to decide on all the issues that could be decided by a subordinate authority. Therefore, there is no jurisdictional error in the first respondent having issued Ext.P2 decision.

4. Reverting to the plea of the petitioner on the question of absence of pre-decisional notice to him, the respondents have placed a counter affidavit on record with copy to the petitioner on 19-10-2002. There is no reply affidavit. The counter affidavit explicitly states the competing service details. Going by paragraph 2 of the counter affidavit of the second respondent, the

petitioner, who entered service as Lower Division Clerk on 27-12-1987, passed all the qualifying tests for promotion in November, 1988 and was promoted as UDC on 28-12-1989. The third respondent, going by paragraph 3 of that counter affidavit, entered service on 13-7-1987 and his probation was declared with effect from 28-8-1989. He was promoted as UDC on 28-6-1990 and had appeared for account test (lower) in November, 1989, the result of which was declared on 10-3-1990. He had passed all the qualifying tests for UDC on 10-3-1990. He was included in the seniority list of UDC. He is a member of the Scheduled Caste community and therefore entitled to the benefit of the provision in Rule 13A(1)(a) of the General Rules and therefore was entitled to be promoted even if he were not test qualified. Therefore, the notional promotion given to the third respondent was in accordance with the dictate of the General Rules, which applies. That situation is not shown to be contrary to law and the Constitution. Under such circumstances, even if the petitioner were given an opportunity of pre-decisional hearing, the resultant decision would not have been different. Therefore, I am not inclined to disturb the finality that Ext.P2 has obtained merely on

the ground of absence of pre-decisional notice.

In the result, this writ petition fails. The same is hence dismissed. No costs.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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O.P.No.11025 of 2002

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JUDGMENT

Dated:3-10-2007